

105TH CONGRESS
2D SESSION

S. 1691

To provide for Indian legal reform, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 1998

Mr. GORTON introduced the following bill; which was read twice and referred
to the Committee on Indian Affairs

A BILL

To provide for Indian legal reform, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “American Indian Equal Justice Act”.

6 (b) FINDINGS.—Congress finds that—

7 (1) a universal principle of simple justice and
8 accountable government requires that all persons be
9 afforded legal remedies for violations of their legal
10 rights;

11 (2) the fifth amendment of the Constitution
12 builds upon that principle by guaranteeing that

1 “ . . . no person shall be deprived of life, liberty, or
2 property without due process of law”;

3 (3) sovereign immunity, a legal doctrine that
4 has its origins in feudal England when it was policy
5 that the “King could do no wrong”, affronts that
6 principle and is incompatible with the rule of law in
7 democratic society;

8 (4) for more than a century, the Government of
9 the United States and the States have dramatically
10 scaled back the doctrine of sovereign immunity with-
11 out impairing their dignity, sovereignty, or ability to
12 conduct valid government policies;

13 (5) the only remaining governments in the
14 United States that maintain and assert the full
15 scope of immunity from lawsuits are Indian tribal
16 governments;

17 (6) according to the 1990 decennial census con-
18 ducted by the Bureau of the Census, nearly half of
19 the individuals residing on Indian reservations are
20 non-Indian;

21 (7) for the non-Indian individuals referred to in
22 paragraph (6) and the thousands of people of the
23 United States, Indian and non-Indian, who interact
24 with tribal governments everyday, the rights to due

1 process and legal remedy are constantly at risk be-
2 cause of tribal immunity;

3 (8) by providing a complete shield from legal
4 claims, the doctrine of sovereign immunity frustrates
5 justice and provokes social tensions and turmoil in-
6 imical to social peace;

7 (9) the Supreme Court has affirmed that Con-
8 gress has clear and undoubted constitutional author-
9 ity to define, limit, or waive the immunity of Indian
10 tribes; and

11 (10) it is necessary to address the issue re-
12 ferred to in paragraph (9) in order to—

13 (A) secure the rights provided under the
14 Constitution for all persons; and

15 (B) uphold the principle that no govern-
16 ment should be above the law.

17 (c) PURPOSE.—The purpose of this Act is to assist
18 in ensuring due process and legal rights throughout the
19 United States and to strengthen the rule of law by making
20 Indian tribal governments subject to judicial review with
21 respect to certain civil matters.

22 **SEC. 2. DEFINITIONS.**

23 In this Act:

24 (1) INDIAN TRIBE.—The term “Indian tribe”
25 means any Indian tribe or band with a governing

1 body duly recognized by the Secretary of the Inte-
 2 rior.

3 (2) TRIBAL IMMUNITY.—The term “tribal im-
 4 munity” means the immunity of an Indian tribe
 5 from jurisdiction of the courts, judicial review of an
 6 action of that Indian tribe, and other remedies.

7 **SEC. 3. COLLECTION OF STATE TAXES.**

8 Section 1362 of title 28, United States Code, is
 9 amended—

10 (1) by inserting “(a)” before “The district
 11 courts”;

12 (2) by inserting “(referred to in this section as
 13 an ‘Indian tribe’)” after “Interior”; and

14 (3) by adding at the end the following:

15 “(b)(1) An Indian tribe, tribal corporation, or mem-
 16 ber of an Indian tribe, shall collect, and remit to a State,
 17 any excise, use, or sales tax imposed by the State on non-
 18 members of the Indian tribe as a consequence of the pur-
 19 chase of goods or services by the nonmember from the In-
 20 dian tribe, tribal corporation, or member.

21 “(2) A State may bring an action in a district court
 22 of the United States to enforce the requirements under
 23 paragraph (1).

24 “(3) To the extent necessary to enforce this sub-
 25 section with respect to an Indian tribe, tribal corporation,

1 or member of an Indian tribe, the tribal immunity of that
 2 Indian tribe, tribal corporation, or member is waived.”.

3 **SEC. 4. INDIAN TRIBES AS DEFENDANTS.**

4 (a) PROVISIONS TO PARALLEL THE PROVISIONS
 5 THAT ARE POPULARLY KNOWN AS THE TUCKER ACT.—
 6 Section 1362 of title 28, United States Code, as amended
 7 by section 3, is further amended by adding at the end the
 8 following:

9 “(c)(1) The district courts of the United States shall
 10 have original jurisdiction in any civil action or claim
 11 against an Indian tribe, with respect to which the matter
 12 in controversy arises under the Constitution, laws, or trea-
 13 ties of the United States.

14 “(2) The district courts shall have jurisdiction of any
 15 civil action or claim against an Indian tribe for liquidated
 16 or unliquidated damages for cases not sounding in tort
 17 that involve any contract made by the governing body of
 18 the Indian tribe or on behalf of an Indian tribe.

19 “(d) Subject to the provisions of chapter 171A, the
 20 district courts shall have jurisdiction of civil actions in
 21 claims against an Indian tribe for money damages, accru-
 22 ing on or after the date of enactment of the American
 23 Indian Equal Justice Act for injury or loss of property,
 24 personal injury, or death caused by the negligent or
 25 wrongful act or omission of an Indian tribe under cir-

1 cumstances in which the Indian tribe, if a private individ-
 2 ual or corporation would be liable to the claimant in ac-
 3 cordance with the law of the State where the act or omis-
 4 sion occurred.

5 “(e) To the extent necessary to enforce this section,
 6 the tribal immunity (as that term is defined in section 2
 7 of the American Indian Equal Justice Act) of the Indian
 8 tribe (as that term is defined in such section 2) involved
 9 is waived.”.

10 **SEC. 5. TORT CLAIMS PROCEDURE.**

11 (a) IN GENERAL.—Part 6 of title 28, United States
 12 Code, is amended by inserting after chapter 171 the fol-
 13 lowing:

14 **“CHAPTER 171A—INDIAN TORT CLAIMS** 15 **PROCEDURE**

“Sec.

“2691. Definitions.

“2692. Liability of Indian tribes.

“2693. Compromise.

“2694. Exceptions; waiver.

16 **“§ 2691. Definitions**

17 “In this chapter:

18 “(1)(A) Subject to subparagraph (B), the term
 19 ‘employee of an Indian tribe’ includes—

20 “(i) an officer or employee of an Indian
 21 tribe; and

22 “(ii) any person acting on behalf of an In-
 23 dian tribe in an official capacity, temporarily or

1 permanently, whether with or without com-
 2 pensation (other than an employee of the Fed-
 3 eral Government or the government of a State
 4 or political subdivision thereof who is acting
 5 within the scope of the employment of that indi-
 6 vidual).

7 “(B) The term includes an individual who is
 8 employed by an Indian tribe to carry out a self-de-
 9 termination contract (as that term is defined in sec-
 10 tion 4(j) of the Indian Self-Determination and Edu-
 11 cation Assistance Act (25 U.S.C. 450b(j))).

12 “(2) The term ‘Indian tribe’ means any Indian
 13 tribe or band with a governing body duly recognized
 14 by the Secretary of the Interior.

15 **“§ 2692. Liability of Indian tribes**

16 “(a) An Indian tribe shall be liable, relating to tort
 17 claims, in the same manner and to the same extent, as
 18 a private individual or corporation under like cir-
 19 cumstances, but shall not be liable for interest before judg-
 20 ment or for punitive damages.

21 “(b) In any case described in subsection (a) in which
 22 a death was caused and the law of the State where the
 23 act or omission complained of occurred provides for puni-
 24 tive damages, the Indian tribe shall, in lieu of being liable
 25 for punitive damages, be liable for actual or compensatory

1 damages resulting from that death to each person on be-
 2 half of whom action was brought.

3 **“§ 2693. Compromise**

4 “The governing body of an Indian tribe or a designee
 5 of that governing body may arbitrate, compromise, or set-
 6 tle any claim cognizable under section 1362(d).

7 **“§ 2694. Exceptions; waiver**

8 “(a) The provisions of this chapter and section
 9 1362(d) shall not apply to any case relating to a con-
 10 troversy relating to membership in an Indian tribe.

11 “(b) With respect to an Indian tribe, to the extent
 12 necessary to carry out this chapter, the tribal immunity
 13 (as that term is defined in section 2 of the American In-
 14 dian Equal Justice Act) of that Indian tribe is waived.”.

15 (b) CLERICAL AMENDMENT.—The table of chapters
 16 for title 28, United States Code, is amended by inserting
 17 after the item relating to chapter 171 the following:

“171A. Indian Tort Claims Procedure 2691”.

18 **SEC. 6. INDIAN TRIBES AS DEFENDANTS IN STATE COURTS.**

19 (a) CONSENT TO SUIT IN STATE COURT.—Consent
 20 is hereby given to institute a civil cause of action against
 21 an Indian tribe in a court of general jurisdiction of the
 22 State, on a claim arising within the State, including a
 23 claim arising on an Indian reservation or Indian country,
 24 in any case in which the cause of action—

1 (1) arises under Federal law or the law of a
2 State; and

3 (2) relates to—

4 (A) tort claims; or

5 (B) claims for cases not sounding in tort
6 that involve any contract made by the governing
7 body of an Indian tribe or on behalf of an In-
8 dian tribe.

9 (b) TORT CLAIMS.—In any action brought in a State
10 court for a tort claim against an Indian tribe, that Indian
11 tribe shall be liable to the same extent as a private individ-
12 ual or corporation under like circumstances, but shall not
13 be liable for interest prior to judgment or for punitive
14 damages.

15 (c) FEDERAL CONSENT.—Notwithstanding the provi-
16 sions of the Act of August 15, 1953 (67 Stat. 588 et seq.,
17 chapter 505), section 1360 of title 28, United States Code,
18 and sections 401 through 404 of the Civil Rights Act of
19 1968 (25 U.S.C. 1321 through 1324) and section 406 of
20 such Act (25 U.S.C. 1326) that require the consent of
21 an Indian tribe for a State to assume jurisdiction over
22 matters of civil law, this section constitutes full and com-
23 plete consent by the United States for a State court to
24 exercise jurisdiction over any claim referred to in sub-
25 section (a).

1 (d) REMOVAL.—An action brought under this sec-
2 tion—

3 (1) shall not be removable under section 1441
4 of title 28, United States Code; and

5 (2) shall be considered to meet the require-
6 ments for an exception under section 1441(a) of title
7 28, United States Code.

8 **SEC. 7. INDIAN CIVIL RIGHTS.**

9 Title II of the Civil Rights Act of 1968 (commonly
10 known as the “Indian Civil Rights Act”) (25 U.S.C. 1301
11 et seq.) is amended by adding at the end the following:

12 **“SEC. 204. ENFORCEMENT.**

13 “The district courts of the United States shall have
14 jurisdiction in any civil rights action alleging a failure to
15 comply with rights secured by the requirements under this
16 title. With respect to an Indian tribe, to the extent nec-
17 essary to enforce this title, the tribal immunity of that
18 Indian tribe (as that term is defined in section 2 of the
19 American Indian Equal Justice Act) is waived.”.

20 **SEC. 8. APPLICABILITY.**

21 This Act and the amendments made under this Act
22 shall apply to cases commenced against an Indian tribe
23 on or after the date of enactment of this Act.

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